

West, Danielle@Labor

From: geno@brickhousedining.com
Sent: Wednesday, March 4, 2026 4:55 PM
To: West, Danielle@Labor
Cc: 'Franco Cassella'
Subject: FW: PAGA 2026 Rule Changes: Comments Letter & Request for Public Hearing
Attachments: 2026 PAGA Reforms Letter.pdf

Importance: High

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Ms. West,

WRITTEN COMMENTS LETTER: Attached is My written comments letter for the 2026 PAGA rule changes (due on March 23rd).

REQUEST FOR PUBLIC HEARING: This e-mail is also intended to act as a request for a public hearing which is due 15 days prior to March 23rd. I don't wish to over inundate you with messages so I am hoping that this e-mail can act as that request for a public hearing. If you require a more formal letter for a request for the public hearing, please let me know and I will submit it immediately. If you have any additional questions, I am always available via e-mail or my private phone which is listed below.

Lastly, if you are conducting any verbal or in person interviews relevant to this matter I would love to be able to participate and share my experiences further. I wanted to keep this letter focused on PAGA itself, as PAGA is the subject matter at hand. However, there are other concerns related to how class action lawsuits (though separate) play a role in the PAGA process, especially during mediations.

Can you please reply with confirmation of receipt of this email?

Thank you for your attention to this matter!

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March 4, 2026

Danielle West, PAGA Rulemaking and Policy Analyst
California Labor and Workforce Development Agency
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Re: Proposed PAGA Regulations (Feb 6, 2026)

Dear Ms. West:

I am writing on behalf of independent hospitality employers to express support for the Labor and Workforce Development Agency's proposed rulemaking implementing the 2024 PAGA reforms. The proposed regulations meaningfully advance the Legislature's goals of improving pre-litigation notice quality, expanding workable early-resolution pathways, and strengthening oversight—while enforcing workplace standards.

Support for the Proposed Rulemaking

1. Clearer, more complete, and more useful pre-suit notices. The proposed regulations directly address a core operational problem: many PAGA notices received by employers are boilerplate, conclusory, and difficult to investigate or cure, even when employers want to correct issues promptly. By requiring more meaningful detail and improving the quality of notice submissions, the proposal helps employers quickly identify what happened, where, and when—and make informed decisions to investigate, respond, correct payroll practices, and prevent future issues.
2. Guardrails that deter abusive filing practices while protecting legitimate claims. We support the proposal's targeted controls for high-frequency and vexatious filing behavior. These measures are sensible guardrails that should reduce harassment-driven filings without limiting good-faith employee claims, while also improving the effectiveness of cure conferences and early resolution.
3. Better settlement transparency and coordination. We support the proposal's settlement submission and notice procedures, including structured submissions to LWDA and a review window that allows meaningful agency oversight. These requirements encourage consistent, transparent outcomes and better protection of the State's and employees' interests while allowing parties to resolve disputes efficiently.

Additional Reforms the Legislature Should Consider

While we support adoption of the proposed regulations as written, several additional reforms would further align PAGA’s enforcement purpose with economic realities—particularly for high-turnover, low-margin industries like restaurants—while reducing incentives for predatory litigation behavior.

A) Recalibrate the “100 employee” large-employer line for high-turnover, low-margin independent restaurants

The current 100-employee line can be inequitable when applied to large independent restaurants or smaller 2-3 store restaurants that are still fundamentally small businesses in economic terms, especially where headcount is inflated by turnover, seasonal hiring, and multiple part-time roles. A single-unit independent restaurant can exceed 100 employees over a year because of churn, even when its average active workforce is far smaller and its margins remain thin.

Industry structure and margins justify an adjustment. The National Restaurant Association reports that most restaurants are small operators (including that a large share have fewer than 50 employees and many are single-unit operations), and that profitability is often modest, which limits the ability to absorb large, unpredictable litigation outcomes. In addition, BLS JOLTS data show that quits in Accommodation and Food Services consistently run far above the overall private economy, reflecting churn that inflates annual headcounts.

If compliance and litigation outcomes become too costly—especially where penalties and attorney fees grow quickly—closures accelerate. Closures mean lost jobs, reduced local economic activity, and fewer entry-level opportunities in a sector that employs and trains a large share of the workforce.

Recommendation: Replace a simple annual headcount measure with a more accurate standard such as average monthly headcount, full-time equivalents (FTE), or average number of employees on payroll per pay period. Alternatively, adopt an industry-sensitive adjustment for high-turnover sectors so single-unit independent restaurants are not treated as “large employers” solely due to churn.

B) Establish partial fee-shifting where plaintiffs pursue excessive, unreasonable penalties to force settlements

Predatory litigation thrives when escalating penalties and one-way fee dynamics create pressure to settle even weak or inflated claims. LWDA and the Legislature should consider a narrow, court-supervised fee-shifting framework that allows allocation of a portion of defense fees and costs to plaintiffs (or, where appropriate, to plaintiffs’ counsel) when a court finds that penalty

theories were pursued in bad faith or were objectively unreasonable after notice and an opportunity to be heard.

This approach would not punish good-faith employees. Instead, it would deter abusive “volume + pressure” tactics, encourage earlier correction of legitimate issues, and reduce incentives for filing cases designed primarily to maximize fees rather than deliver employee recovery.

C) Implement per-employee fee caps or proportionality limits on attorney fees; reallocate excess to employees

Boilerplate filings are already common, and modern automation and AI tools can further reduce the labor required to draft and prosecute high-volume complaints. However, fee requests do not always decrease proportionally, creating incentives that reward volume rather than meritorious claims and meaningful employee recovery.

Recommendation: Adopt proportionality constraints such as (i) a per-aggrieved-employee cap on recoverable fees (scaled to complexity), and/or (ii) a percentage-of-recovery ceiling with limited exceptions for truly novel or complex matters. Any attorney-fee amount above the cap should be reallocated to employee recovery, consistent with PAGA’s remedial intent.

Thank you for the Agency’s work to implement the 2024 reforms through clear, enforceable regulations. We urge LWDA to adopt the proposed rules and to consider the additional reforms above—particularly those that protect workers while reducing incentives for predatory litigation that can destabilize independent employers and eliminate jobs.

Respectfully submitted,

Geno Cassella
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References

- California Labor and Workforce Development Agency (LWDA). Notice of Proposed Rulemaking (Feb. 6, 2026) – LWDA PAGA Rulemaking (Z2026-0121-03). https://www.labor.ca.gov/wp-content/uploads/sites/338/2026/02/2026-2-6-Ntc_Prop_Rulemaking_LWDA_PAGA-Z2026-0121-03.pdf
- National Restaurant Association. Industry statistics (national statistics). <https://restaurant.org/research-and-media/research/industry-statistics/national-statistics/>
- National Restaurant Association. Analysis & commentary on restaurant profitability and cost pressures. <https://restaurant.org/research-and-media/research/restaurant-economic-insights/analysis-commentary/elevated-costs-continue-to-pressure-restaurant-profitability/>
- U.S. Bureau of Labor Statistics (BLS). Job Openings and Labor Turnover Survey (JOLTS), Table 4 – Quits rates by industry. <https://www.bls.gov/news.release/jolts.t04.htm>